

No. _____

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS
AT AUSTIN**

FILED
COURT OF CRIMINAL APPEALS
3/30/2020
DEANA WILLIAMSON, CLERK

Charles Ransier, Appellant
v.
The State of Texas, Appellee

14-17-00580-CR
In the Fourteenth Court of Appeals
Houston, Texas

Appealed from the 207th Judicial District Court
Cause No. CR2016-303
Comal County, Texas

**STATE'S MOTION TO EXTEND TIME TO FILE
PETITION FOR DISCRETIONARY REVIEW**

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TO THE HONORABLE JUDGES OF SAID COURT:

Now comes the State of Texas, Appellee (and Petitioner) in the above-styled and -numbered cause, and moves for an extension of time of 29 days from the current deadline to file its PDR, and for good cause would show the following:

I. Procedural History

After the Trial Court denied Appellant’s initial request for a lesser-included instruction on Attempted Tampering, Appellant argued to the Jury that it should convict him of the Possession offense but acquit him of Tampering, since it did not have the option of Attempted Tampering in the charge. The Jury rejected Appellant’s argument and convicted Appellant of *both* Possession and Tampering.

On appeal, Appellant challenged only two of the State’s three Tampering theories. In a 2-1 decision, the Fourteenth Court reversed anyway, crafting a new “guilty only” rule and concluding—under *Saunders*’ virtually ‘automatic’ harm rule—that Appellant had been harmed by the Trial Court’s refusal to instruct the jury on lesser-included offenses of Attempted Tampering on two of the State’s three theories. *Ransier v. State*, Nos. 14-17-00580-CR, 14-17-00581-CR, 2019 Tex. App. LEXIS 6021, at *1 (Tex. App.—Houston [14th Dist.] July 16, 2019, no pet. h.) (designated for publication) (hereinafter “*Ransier I*”). Justice Jewell dissented,

noting a Jury could not rationally conclude Appellant “failed to alter, destroy or conceal the syringe by all means alleged.” Dissent at 5; *see also id.* at 6, 6 n.2.

After the State timely filed a Motion for Rehearing, the Court issued a Supplemental Opinion in which it stated:

Nowhere in the majority opinion did we conclude that Kral broke the needle. We recited the facts that Kral grabbed appellant by the shoulder [while appellant was trying to break the needle] and forced him out of the truck, and appellant fell to the ground. We also explained that on the ground, appellant still held the syringe, but tried to throw it aside. The syringe landed about two feet from appellant. Kral testified that he could not determine whether appellant’s falling to the ground after Kral threw him to the ground caused the needle to break off. We concluded a rational jury could have inferred that the syringe was broken by the fall. We stated that any breakage following the struggle was incidental to the struggle and at least arguably involuntary as to appellant.

Ransier v. State, Nos. 14-17-00580-CR, 14-17-00581-CR, 2019 Tex. App. LEXIS 9360, at *3 (Tex. App.—Houston [14th Dist.] Oct. 24, 2019, no pet. h.) (designated for publication) (hereinafter “*Ransier II*”). Concluding that “appellant may not have anticipated that Kral’s attempt to stop him from breaking the syringe would cause the syringe to break,” the Court stated that “[a] jury could conclude appellant was guilty of attempted tampering if it found appellant had the specific intent to break the syringe but failed to do so,” which the Court concluded entitled him to a lesser-included instruction. *Id.* at *3-5, *7. The Court dismissed the State’s Motion for En Banc Reconsideration “without prejudice to filing a motion for en banc reconsideration in light of this supplemental opinion.” *Id.* at *2. The Court then

granted the State’s motion for extension to December 3, 2019, and the State timely filed its Motion for En Banc Reconsideration on December 3rd. On December 18th, the Fourteenth Court requested that Appellant file a response to the State’s Motion, which Appellant did on January 23rd. The Fourteenth Court then denied the State’s Motion on March 3, 2020; the State’s Petition would therefore be due in this Court on or before April 2, 2020. *See* Tex. R. App. P. 68.2(a).

II. The State Respectfully Requests an Extension of Time Under Tex. R. App. P. 68.2(a) & (c).

The undersigned attorney—who prepared the Motions for Rehearing and En Banc Reconsideration, and will file the PDR—has also worked on numerous other cases within the past month. I filed the State’s Petition for Discretionary Review in PD-0200-20 on March 4, 2020. I filed the State’s Reply Brief in 03-19-00633-CR—just under the 7,500-word limit—on March 12, 2020. I filed the State’s Brief in 03-19-00236-CR on March 17th. I then immediately began working on the State’s Brief in 03-19-00824-CR—a State’s appeal which has already required multiple extensions—which is currently due on April 10, 2020, though I hope to file it next week; I will then finish and file the State’s PDR in this case. I also have a brief currently due in 03-19-00311-CR by April 22nd. Today I also filed for an extension in 03-19-00133-CR.

Additionally, in the course of my normal responsibilities, I perform a substantial amount of work helping other attorneys in the office with research related to their trials, motions and appeals. I would also like for other attorneys in the office to review my petition before I file it. In light of the foregoing, I anticipate I will not be able to finish the State's Petition for Discretionary Review in this case by the current April 2nd deadline, and I respectfully request an extension of 29 days to file the State's Petition. This is the State's first motion to extend time to file its Petition for Discretionary Review, and it is not requested for the purpose of delay, but so that justice may be done.

III. Prayer

WHEREFORE, PREMISES CONSIDERED, the State respectfully prays for an extension of 29 days—until May 1, 2020—to complete, review and file its State's Petition for Discretionary Review adequately presenting its case to this Honorable Court.

Respectfully submitted,

/s/ Joshua D. Presley

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Certificate of Service

I, Joshua D. Presley, Assistant District Attorney for the State of Texas, Appellee/Petitioner, hereby certify that a true and correct copy of this *State's Motion to Extend Time* has been sent to Appellant CHARLES RANSIER's attorney in this matter:

Amanda Erwin
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109 East Hopkins Street, Suite 200
San Marcos, TX 78666
Counsel for Appellant on Appeal

By electronically sending it to the above-listed email address, this 27th day of March, 2020.

/s/ Joshua D. Presley
Joshua D. Presley